

APPEAL NO. 041190
FILED JULY 7, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 20, 2004. On the sole issue, the hearing officer decided that the appellant (claimant) has a 15% impairment rating (IR) as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The claimant appeals this determination on sufficiency of the evidence grounds and asserts that she is entitled to a 25% IR under Texas Workers' Compensation Commission Advisory 2003-10, dated July 22, 2003.¹ The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant has a 15% IR, as certified in the designated doctor's second amended report. Section 408.125(e) provides that the Commission-selected designated doctor's IR certification is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) further provides that a designated doctor's response to a Commission request for clarification is considered to have presumptive weight, as it is part of the designated doctor's opinion. The hearing officer found that the designated doctor considered Advisory 2003-10 and that his second amended report was not contrary to the great weight of the other medical evidence. We cannot conclude that the hearing officer's IR determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant also asserts that the Commission abused its discretion by sending a second request for clarification to the designated doctor in response to the carrier doctor's report. The claimant did not raise this argument at the hearing below. The asserted error was, therefore, waived and will not be addressed for the first time on appeal.

¹ We note that Advisory 2003-10 was amended by Advisory 2003-10B, effective February 24, 2004. The provisions relevant to this appeal were not modified.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Edward Vilano
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge